



## ***CLOSED CASE SUMMARY***

ISSUED DATE: MARCH 27, 2020

CASE NUMBER: 2016OPA-1405

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

<b>Allegation(s):</b>		<b>Director's Findings</b>
# 1	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Lawful and Proper)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

#### **Named Employee #2**

<b>Allegation(s):</b>		<b>Director's Findings</b>
# 1	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Lawful and Proper)
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

The Complainant alleged that the Named Employees abused their discretion in enforcing the "sit/lie" ordinance and failed to de-escalate prior to using force in the course of arresting the Subject.

### **ADMINISTRATIVE NOTE:**

This case was referred to the OPA Auditor for certification shortly before the expiration of the 180-day timeline imposed by the Collective Bargaining Agreement between the City and SPOG. It was returned with a request for additional investigation. In that request, the OPA Auditor directed that additional efforts be made to contact the civilian Complainant and witnesses and, potentially, to review third-party video of the incident. Due to high caseloads at the time, OPA was unable to make these additional efforts prior to the expiration of the 180-day deadline. Ultimately, OPA reached out to the Complainant, Subject, and witnesses but could not make contact with them. Subsequently, OPA resubmitted this investigation for certification. The Office of the Inspector General certified for objectivity but declined to certify for thoroughness or timeliness. In OPA's judgment, and notwithstanding the OIG's certification decision, there is sufficient evidence to issue findings in this case. Moreover, even had this case been timely submitted, none of the findings within would have been recommended Sustained.

### **ANALYSIS AND CONCLUSIONS:**



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**Named Employee #1 - Allegation #1**

***8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force***

On the date in question, the Named Employee were bicycle officers assigned to the North Precinct. They were tasked with enforcing Seattle's "sit/lie" ordinance. The chain of command specifically instructed officers enforcing the ordinance to remain in the area of a violation until the subject of the enforcement vacated the premises. This directive was based on many prior instances in which individuals failed to vacate after being directed to do so by officers who then departed. Here, the Named Employees observed a woman, later identified as the Subject, who was sleeping in a doorway of a business with significant property and garbage surrounding her. The Subject's items, including the cot that she was sleeping on, were jutting onto the public sidewalk. The Named Employees made the decision to contact the Subject to enforce the ordinance. Named Employee #2 (NE#2) was the primary officer and she initiated the interaction with the Subject. Named Employee #1 (NE#1), as the backing officer, stood within several feet of NE#2.

NE#2 reported that she warned the Subject that she needed to move her things and explained the "sit/lie" ordinance. While the Subject started to move her things, she began to grow aggressive and yelled at the Named Employees. The Subject then picked up a bottle of water and, without warning, threw the water onto NE#2. At that point, the Named Employees made the decision to place the Subject under arrest.

The Named Employees, who confirmed that they were aware that the Subject was pregnant at the time (she was eight months pregnant), then went hands-on with the Subject. NE#2 reported that the Subject began flailing and that this caused NE#2 to fall to the ground. NE#1 remembered that one of them fell to the ground but did not specify exactly who did. NE#2 also reported that the Subject kicked her. The Subject went down to her knees and then onto her side. The Named Employees used body weight to hold the Subject to the ground until additional officers could arrive on scene. The Named Employees did not strike the Subject; however, NE#1 stated that, after the Subject reportedly kicked NE#2, NE#1 used a "goose neck" hold on the Subject's right wrist as a form of pain compliance to cause the Subject to stop resisting. Once the Subject stopped resisting and was subdued, the officers got her onto her feet and walked her over to a patrol vehicle, placing her inside.

The Subject was evaluated by Seattle Fire Department (SFD) personnel at the scene and was ultimately cleared. She was then transported to the North Precinct. While there, the Subject complained of abdominal pain. She was again treated by SFD and was eventually taken to a hospital. She was medically evaluated, cleared, and then released back into SPD custody by the hospital. The Subject was then booked into the King County Jail.

As part of the review of the Named Employees' force, SPD supervisors interviewed a number of civilian witnesses to the incident. Three of those witnesses (one of whom is the Complainant in this case) asserted that the Named Employees did not de-escalate prior to using force. A supervisor viewed video taken by one of the civilian witnesses, which was consistent with the force described above. The witness reports resulted in a referral to OPA by the chain of command. OPA attempted to contact the Complainant and witnesses. As noted above, they did not return requests for contact.

The chain of command reviewed the force and found it to be consistent with policy. However, the Named Employees' Captain found that the Named Employees may have failed to properly de-escalate. He stated the



following: "I believe additional options were available for de-escalation prior to the use of force which may've resulted in the avoidance of the use of force." The Captain further reasoned that NE#2: "should have provided [the Subject] additional time and space to go from a sleeping state to full compliance." The Captain noted that the Subject agreed to leave the area and stated that:

Given that the officers were going to give her a warning if she'd complied, if [NE#2] had provided some slight additional space/distance from [the Subject] with a few more minutes, as she collected her belongings there seems a likelihood that [the Subject] would have been further de-escalated and more likely able to comply with the officer's directions.

As part of its investigation, OPA interviewed the Named Employees. NE#1, who had been trained in crisis intervention techniques, stated that he did not observe the Subject to be in crisis at the time, although she was agitated. He stated that it was standard procedure to remain in the area while the Subject gathered her belongings and vacated the area pursuant to verbal warnings, rather than to leave and allow the Subject to vacate the area at her leisure. NE#1 also stated that he heard NE#2 speaking calmly to the Subject and assuring her that NE#2 was not trying to stand near her. NE#1 stated that he might have employed additional or different de-escalation tactics in hindsight, but at the time did not perceive any indication that the Subject was about to throw water on NE#2 and instead thought that her decision to drink water was a self-calming act. Regarding the decision to arrest, NE#1 stated that, when the Subject poured water on NE#2, he recognized this as an assault. Moreover, he perceived the action as an intent to fight and that, in his opinion, it was a potential precursor to further assault.

During her interview, NE#2 described her initial contact with the Subject. She stated that the Subject was in an alcove approximately four feet deep and that the Subject's belongings filled most of it, including a cot which was placed perpendicular to the street. Regarding de-escalation, NE#2 said that she tried to gain voluntary compliance with the order to vacate by suggesting to the Subject that she go to a shelter. NE#2 recalled telling the Subject that her advanced pregnancy would likely result in multiple shelters being willing to house her. According to NE#2, the Subject said she was not interested in being connected to a shelter. NE#2 said that after explaining "sit/lie," she assured the Subject that she was only going to provide a warning and that no citation would be issued if the Subject agreed to go on her way. NE#2 said that the Subject appeared at first to be gathering her belongings, but that she became increasingly agitated and told NE#2 to give her space. NE#2 said that she stood with the cot between her and the Subject to provide distance. Though the Subject was escalated and verbally confrontational, NE#2 stated that she did not expect the Subject to throw water until she did so. NE#2 also stated that she had to remain in the alcove to keep the Subject in full view for officer safety purposes and that had she backed up out of the alcove, she would not have been able to see the Subject's hands or what she was doing with her belongings.

"De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance." (SPD Policy 8.100-POL-1.)

The policy further instructs that: "When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution." (*Id.*) Officers are also required, "when time and circumstances permit," to "consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors" such as "mental impairment...drug interaction...[and/or] behavioral crisis." (*Id.*) These mental and behavioral factors should be



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balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

After reviewing the totality of the evidence, OPA finds an insufficient basis to determine that the Named Employees violated the Department’s de-escalation policy during this incident.

As a threshold matter, the Named Employees were legally justified in enforcing the “sit/lie” ordinance and, indeed, had received a specific directive to do so. Moreover, that directive included the instruction that they remain with the violators of the ordinance until they vacated the location to ensure actual compliance. Here, the Named Employees did exactly this. They contacted the Subject and then remained in her vicinity to ensure that she complied. OPA’s finds that remaining in her near vicinity was a law enforcement priority and, thus, continuing to do so did not violate the de-escalation policy.

In addition, and prior to using force, the Named Employees engaged in other de-escalation tactics that were purposed to gain voluntary compliance from the Subject. These included suggestions from NE#2 that the Subject seek different shelter options, the use of the cot to maintain distance, and trying to assure the Subject that no enforcement action would be taken as long as she complied with the ordinance.

OPA is mindful of the Captain’s views that NE#2 could have provided the Subject with additional time and space to comply. It is possible that they could have done so and that this might have resulted in a different outcome. To that end, OPA notes that, in their interviews, both of the Named Employees stated that they might have made different decisions in hindsight. However, OPA finds it persuasive that neither NE#1 nor NE#2 initially perceived the Subject to potentially assaultive and made their decisions based on their belief that she was in the process of voluntarily complying with their directives. That this belief was ultimately mistaken does not convert their actions into a



violation of policy, particularly where NE#2 used specific, articulable de-escalation tactics that she believed were prudent at the time.

For these reasons and when evaluating the totality of the evidence, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 5. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

As discussed above, the Named Employee were under a specific directive at the time to enforce the “sit/lie” ordinance in their assigned patrol area. As such, their decision to enforce the ordinance with respect to the Subject cannot be deemed to be an abuse of their discretion. This is the case even though the incident unfortunately resulted in a use of force. For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #1 - Allegation #3**

***8.200 - Using Force 1. Use of Force: When Authorized***

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

For the following reasons, OPA finds that the Named Employees did not use force inconsistent with policy during this incident.

OPA notes that, once the Subject refused to comply with their directions to leave the area, the Named Employees had probable cause to arrest her for obstruction. They then developed probable cause for assault when the Subject threw water onto NE#2. With the legal authority to take the Subject into custody came the right to use force, if appropriate, to effectuate the arrest. As such the force was reasonable.

The force was also necessary as, given the Subject’s resistive and assaultive behavior, there was no method to place her under arrest other than using force. Moreover, the officers tried to use the least amount of force possible.



Indeed, the force used was bringing the Subject down to a kneeling and then lying position, holding her to the ground, and using a hold on her hand to prevent her from further resisting. OPA notes that the only reason this force was required in the first place was because the Subject flailed her body around and caused a physical threat to the officers and herself.

Lastly, the force used appeared to be proportional to the threat posed by the Subject and her non-compliance. While the Subject was pregnant at the time, the officers were still permitted to use force to defend themselves and to effectuate their lawful purposes. It appeared that they were mindful of the Subject's physical state, that they used the minimal force possible, and that they quickly modulated their force as soon as the Subject was under control.

Given the above, OPA finds that the Named Employees did not use excessive force during this incident. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #2 - Allegation #1**

***8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force***

For the same reasons as above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #2 - Allegation #2**

***5.001 - Standards and Duties 5. Employees May Use Discretion***

For the same reasons as above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #2 - Allegation #3**

***8.200 - Using Force 1. Use of Force: When Authorized***

For the same reasons as above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both Named Employees.

Recommended Finding: **Not Sustained (Lawful and Proper)**